

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**IRONCLAD PERFORMANCE WEAR
CORPORATION,**

Plaintiff,

v.

ORR SAFETY CORPORATION,

Defendant.

Case No. 3:15-cv-03453-D

DEFENDANT’S MOTION TO COMPEL

Defendant/Counterclaim Plaintiff ORR Safety Corporation (“ORR”) moves pursuant to Federal Rule of Civil Procedure 37(a) to compel Plaintiff/Counterclaim Defendant Ironclad Performance Wear Corporation (“Ironclad”) to produce personnel files for nine former employees of Ironclad, namely Ed Jaeger, Scott Jarus, Fred Castro, Thomas Kreig, Annie Evans, Jim Rice, Lee Turlington, Rhonda Hoffarth, and Bryan Griggs. ORR further seeks, pursuant to Federal Rule of Civil Procedure 37(a)(5), its expenses, including reasonable attorneys’ fees, incurred in bringing this motion.

As set forth more fully in the accompanying brief in support of this motion, Ironclad and ORR each allege that the other has failed to live up to contractual obligations. In particular, Ironclad alleges that ORR has not actively promoted and marketed a line of gloves manufactured by Ironclad and distributed by ORR, while ORR alleges, among other things, that Ironclad failed to provide support for ORR’s marketing activities and failed to timely deliver products ordered by ORR’s customers.

In light of those accusations, ORR has requested the personnel files of nine individuals that are all former employees of Ironclad and that had substantial responsibilities relating to ORR's and Ironclad's relationship and business dealings. Those personnel files are expected to contain performance reviews of such former Ironclad employees, as well as information about why the employees resigned or were terminated. As the performance of Ironclad's employees that were involved in its relationship with ORR has been placed directly into question by both Ironclad's and ORR's allegations in this case, the personnel files are clearly relevant. Further, any severance, termination, separation, or consulting agreements between Ironclad and those employees, which Ironclad has confirmed would be contained within those personnel files, are crucial to evaluating the credibility of, and potential loyalty to Ironclad of, those former employees, each of whom will likely be a witness in the matter.

Finally, to alleviate any concerns over confidentiality of documents in the personnel files, ORR has already informed Ironclad that it would agree that the documents can be produced pursuant to the Agreed Protective Order entered in this case, that insurance information and driver's licenses could be removed, and that social security numbers could be redacted. Ironclad also offered to attempt to narrow its request if Ironclad would simply provide an index as to the contents of the personnel files. Despite that, Ironclad has refused to produce any documents or to provide such an index.

Accordingly, ORR has been forced to move to compel the production of these clearly relevant documents. Pursuant to Federal Rule of Civil Procedure 37(a), the Court should compel Ironclad to produce the requested documents and should award ORR its reasonable expenses, including attorneys' fees, incurred in bringing this motion.

CERTIFICATE OF CONFERENCE

On June 1, 2016, I conferred by telephone with counsel for Ironclad, Michael Sherman, regarding ORR's request for the personnel files. Mr. Sherman stated that Ironclad opposed that request and would not provide the personnel files. Before proceeding to bring the issue before the Court, I made additional attempts at resolving it through emails dated June 1 and June 2, 2016. Mr. Sherman responded to those emails in a letter dated June 10, 2016 stating that Ironclad would not be providing the personnel files.

Respectfully submitted,

s/ Jennifer Metzger Stinnett

Benjamin C. Fultz (admitted *pro hac vice*)

Jennifer Metzger Stinnett (admitted *pro hac vice*)

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CERTIFICATE OF SERVICE

On June 17, 2016, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

s/ Jennifer Metzger Stinnett

Counsel for Defendant and Counterclaim Plaintiff